

AMENDED IN SENATE JUNE 11, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1705**

---

---

**Introduced by Assembly Member Williams**

February 13, 2014

---

---

An act to amend Sections 7201 and 10261 of the Public Contract Code, relating to public contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as amended, Williams. Public contracts: payment.

Existing ~~law~~ *law, until January 1, 2016*, authorizes the retention proceeds withheld from any payment by an awarding entity, as described, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor to exceed 5% on specific projects where the director of the applicable department, as specified, has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention and the department or public entity includes both this finding and the actual retention amount in the bid documents.

~~This bill~~, *bill would extend the operation of these provisions until January 1, 2020, and*, instead of requiring that the finding and actual retention amount be included in the bid documents, would require that the bid documents include details explaining the basis for the finding in addition to the actual retention amount. The bill would also define projects that are not “substantially complex.”

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 7201 of the Public Contract Code is  
2     amended to read:  
3     7201. (a) (1) This section shall apply with respect to all  
4     contracts entered into on or after January 1, 2012, between a public  
5     entity and an original contractor, between an original contractor  
6     and a subcontractor, and between all subcontractors thereunder,  
7     relating to the construction of any public work of improvement.  
8     (2) Under no circumstances shall any provision of this section  
9     be construed to limit the ability of any public entity to withhold  
10    150 percent of the value of any disputed amount of work from the  
11    final payment, as provided for in subdivision (c) of Section 7107.  
12    In the event of a good faith dispute, nothing in this section shall  
13    be construed to require a public entity to pay for work that is not  
14    approved or accepted in accordance with the proper plans or  
15    specifications.  
16    (3) For purposes of this section, “public entity” means the state,  
17    including every state agency, office, department, division, bureau,  
18    board, or commission, the California State University, the  
19    University of California, a city, county, city and county, including  
20    charter cities and charter counties, district, special district, public  
21    authority, political subdivision, public corporation, or nonprofit  
22    transit corporation wholly owned by a public agency and formed  
23    to carry out the purposes of the public agency.  
24    (b) (1) The retention proceeds withheld from any payment by  
25    a public entity from the original contractor, by the original  
26    contractor from any subcontractor, and by a subcontractor from  
27    any subcontractor thereunder shall not exceed 5 percent of the  
28    payment. In no event shall the total retention proceeds withheld  
29    exceed 5 percent of the contract price. In a contract between the  
30    original contractor and a subcontractor, and in a contract between  
31    a subcontractor and any subcontractor thereunder, the percentage  
32    of the retention proceeds withheld shall not exceed the percentage  
33    specified in the contract between the public entity and the original  
34    contractor.

1 (2) This subdivision shall not apply if the contractor provides  
2 written notice to the subcontractor, pursuant to subdivision (c) of  
3 Section 4108, prior to, or at, the time that the bid is requested, that  
4 bonds shall be required, and the subcontractor subsequently is  
5 unable or refuses to furnish to the contractor a performance and  
6 payment bond issued by an admitted surety insurer.

7 (3) Notwithstanding any other provision of this subdivision, the  
8 retention proceeds withheld from any payment by an awarding  
9 entity set forth in paragraphs (1) to (5), inclusive, of subdivision  
10 (a) of Section 10106, from the original contractor, by the original  
11 contractor from any subcontractor, and by a subcontractor from  
12 any subcontractor thereunder, may exceed 5 percent on specific  
13 projects where the director of the department has made a finding  
14 prior to the bid that the project is substantially complex, as defined,  
15 and therefore requires a higher retention amount than 5 percent  
16 and the department includes in the bid documents details explaining  
17 the basis for the finding and the actual retention amount. In a  
18 contract between the original contractor and a subcontractor, and  
19 in a contract between a subcontractor and any subcontractor  
20 thereunder, the percentage of the retention proceeds withheld shall  
21 not exceed the percentage specified in the contract between the  
22 department and the original contractor.

23 (4) Notwithstanding any other provision of this subdivision, the  
24 retention proceeds withheld from any payment by the awarding  
25 entity of a city, county, city and county, including charter cities  
26 and charter counties, district, special district, public authority,  
27 political subdivision, public corporation, or nonprofit transit  
28 corporation wholly owned by a public agency and formed to carry  
29 out the purposes of the public agency, from the original contractor,  
30 by the original contractor from any subcontractor, and by a  
31 subcontractor from any subcontractor thereunder, may exceed 5  
32 percent on specific projects where the governing body of the public  
33 entity or designee, including, but not limited to, a general manager  
34 or other director of an appropriate department, has approved a  
35 finding, on a project by project basis, during a properly noticed  
36 and normally scheduled public hearing and prior to bid that the  
37 project is substantially complex, as defined, and therefore requires  
38 a higher retention amount than 5 percent and the awarding entity  
39 includes in the bid documents details explaining the basis for the  
40 finding and the actual retention amount. In a contract between the

1 original contractor and a subcontractor, and in a contract between  
2 a subcontractor and any subcontractor thereunder, the percentage  
3 of the retention proceeds withheld shall not exceed the percentage  
4 specified in the contract between the department and the original  
5 contractor.

6 (5) As used in this subdivision, projects are not “substantially  
7 complex” if they are ~~either of the following:~~ *regularly, customarily,*  
8 *or routinely performed by the agency or by licensed contractors.*

9 ~~(A) Regularly, customarily, or routinely performed by the~~  
10 ~~agency or by licensed contractors.~~

11 ~~(B) Maintenance projects.~~

12 (c) A party identified in subdivision (a) shall not require any  
13 other party to waive any provision of this section.

14 (d) This section shall remain in effect only until January 1, ~~2016,~~  
15 ~~2020~~, and as of that date is repealed, unless a later enacted statute,  
16 that is enacted before January 1, ~~2016,~~ ~~2020~~, deletes or extends  
17 that date.

18 SEC. 2. Section 10261 of the Public Contract Code, as amended  
19 by Section 6 of Chapter 700 of the Statutes of 2011, is amended  
20 to read:

21 10261. (a) Payments upon contracts shall be made as the  
22 department prescribes upon estimates made and approved by the  
23 department, but progress payments shall not be made in excess of  
24 100 percent of the percentage of actual work completed plus a like  
25 percentage of the value of material delivered on the ground or  
26 stored subject to or under the control of the state, and unused,  
27 except as otherwise provided in this section. The department shall  
28 withhold not more than 5 percent of the contract price until final  
29 completion and acceptance of the project. However, at any time  
30 after 95 percent of the work has been completed, the department  
31 may reduce the funds withheld to an amount not less than 125  
32 percent of the estimated value of the work yet to be completed, as  
33 determined by the department, if the reduction has been approved,  
34 in writing, by the surety on the performance bond and by the surety  
35 on the payment bond. The Controller shall draw his or her warrants  
36 upon estimates so made and approved by the department and the  
37 Treasurer shall pay them. The funds may be released by electronic  
38 transfer if that procedure is requested by the contractor, in writing,  
39 and if the public entity has, in place at the time of the request, the  
40 mechanism for the transfer.

(b) (1) Notwithstanding this section, when the director of the department has made a finding prior to the bid that a specified project is substantially complex, as defined, and therefore requires a higher retention amount than 5 percent, and the department includes in the bid documents details explaining the basis for the finding and the actual retention amount, then payments upon contracts by the department shall be made as the department prescribes upon estimates made and approved by the department. However, progress payments shall not be made in excess of 95 percent of the percentage of actual work completed, plus a like percentage of the value of material delivered on the ground or stored, subject to, or under the control of the state, and unused, except as otherwise provided in this section. At any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them with funds appropriated therefor. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

(2) As used in this subdivision, projects are not “substantially complex” if they are either of the following: *regularly, customarily, or routinely performed by the agency or by licensed contractors.*

~~(A) Regularly, customarily, or routinely performed by the agency or by licensed contractors.~~

~~(B) Maintenance projects.~~

(c) This section shall remain in effect only until January 1, 2016; 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, 2020, deletes or extends that date.